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SENATE BILL 276

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO COMMERCIAL INSTRUMENTS AND TRANSACTIONS; VOIDING
CERTAIN INDEMNITY AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 56-7-2 NMSA 1978 (being Laws 1971,
Chapter 205, Section 1, as amended by Laws 2003, Chapter 309,
Section 2 and by Laws 2003, Chapter 421, Section 2) is amended
to read:

"56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--
AGREEMENTS, COVENANTS AND PROMISES TO INDEMNIFY VOID.--

A. An agreement, covenant or promise, foreign or
domestic, contained in, collateral to or affecting an agreement
pertaining to a well for oil, gas or water, or mine for a
mineral, within New Mexico, that purports to [~~indemnify~~]
require indemnity, inclusive of any obligation of defense, to

1 save, to hold harmless or to release the indemnitee or any
2 third-party beneficiary against loss or liability for damages,
3 including, without limitation, any claims, liens, punitive and
4 exemplary damages, expenses, court costs, attorney fees, fines,
5 penalties, judgments or settlements, arising from the
6 circumstances specified in Paragraph (1), (2) or (3) of this
7 subsection is against public policy and is void:

8 (1) the sole or concurrent negligence of the
9 indemnitee or the agents or employees of the indemnitee;

10 (2) the sole or concurrent negligence of an
11 independent contractor who is directly responsible to the
12 indemnitee; or

13 (3) an accident that occurs in operations
14 carried on at the direction or under the supervision of the
15 indemnitee, an employee or representative of the indemnitee or
16 in accordance with methods and means specified by the
17 indemnitee or employees or representatives of the indemnitee.

18 B. As used in this section, "agreement pertaining
19 to a well for oil, gas or water, or mine for a mineral" means
20 an agreement:

21 (1) concerning any operations related to
22 drilling, deepening, reworking, repairing, improving, testing,
23 treating, perforating, acidizing, logging, conditioning,
24 altering, plugging or otherwise rendering services in
25 connection with a well drilled for the purpose of producing or

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underscored material = new
[bracketed material] = delete

1 disposing of oil, gas or other minerals or water up to and
2 including all operations up to the point of measurement and
3 transfer of ownership and determination of payment for the oil,
4 gas, other minerals or water;

5 (2) for rendering services in connection with
6 a mine shaft, drift or other structure intended for use in the
7 exploration for or production of a mineral; or

8 (3) to perform a portion of the work or
9 services described in Paragraph (1) or (2) of this subsection
10 or an act collateral thereto.

11 C. A provision in an insurance contract consisting
12 of an indemnity agreement naming [~~a person~~] an indemnitee as an
13 additional insured or a provision in an insurance contract or
14 any other contract requiring a waiver of rights of subrogation
15 or otherwise having the effect of imposing a duty of
16 indemnification on the primary insured party that would, if it
17 were a direct or collateral agreement described in Subsections
18 A and B of this section, be void, is against public policy and
19 void.

20 D. A provision in an agreement that agrees to
21 insurance purchase shifting or imposing upon the indemnitor a
22 responsibility to include in any invoice for services a line
23 item for the indemnitor's insurance premiums to be allocable to
24 the work or to arrange for the indemnitee to pay such
25 allocation directly is against public policy and is void.

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[bracketed material] = delete

1 E. A provision in an agreement that requires the
2 application of laws of another state, that is not mutually
3 selected and that does not provide for a choice of law analysis
4 for a dispute arising from, connecting to or concerning the
5 indemnity obligations for work performed in the state of New
6 Mexico is against public policy and is void.

7 F. A provision in an agreement that allows
8 exclusive jurisdiction of a foreign government that deprives
9 the courts of the state of New Mexico of jurisdiction or a
10 provision that recognizes venue of a foreign government for any
11 dispute arising from, connecting to or concerning the indemnity
12 obligations for work performed in the state of New Mexico is
13 against public policy and is void.

14 ~~[D-]~~ G. Nothing in this section:

15 (1) deprives an owner of the surface estate of
16 the right to secure indemnity from a lessee, operator,
17 contractor or other person conducting operations for the
18 exploration of minerals on the owner's land; or

19 (2) affects the validity of a benefit
20 conferred by the Workers' Compensation Act."